

APPENDIX D TO SUBPART E—ALCOHOL PRODUCTION FACILITIES PLANNING, PERFORMING, DEVELOPMENT AND PROJECT CONTROL
 APPENDIX E TO SUBPART E—ENVIRONMENTAL ASSESSMENT GUIDELINES
 APPENDIX F TO SUBPART E—CONDITIONAL COMMITMENT FOR GUARANTEE
 APPENDIX G TO SUBPART E [RESERVED]
 APPENDIX H TO SUBPART E—SUGGESTED FORMAT FOR THE OPINION OF THE LENDER'S LEGAL COUNSEL
 APPENDIX I TO SUBPART E—INSTRUCTIONS FOR LOAN GUARANTEES FOR DROUGHT AND DISASTER RELIEF
 APPENDIX J TO SUBPART E [RESERVED]
 APPENDIX K TO SUBPART E—REGULATIONS FOR LOAN GUARANTEES FOR DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISES
 EXHIBIT G TO SUBPART E [NOTE]

Subparts F–I [Reserved]

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.
 Subpart E also issued under 7 U.S.C. 1932(a).

EFFECTIVE DATE NOTE: At 78 FR 73941, Dec. 9, 2013, the authority citation for Part 1980 was revised, effective Sept. 1, 2014. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

Subparts A–C [Reserved]

Subpart D—Rural Housing Loans

SOURCE: 60 FR 26985, May 22, 1995, unless otherwise noted.

EFFECTIVE DATE NOTE: At 78 FR 73941, Dec. 9, 2013, subpart D of part 1980 was removed and reserved, effective Sept. 1, 2014.

§ 1980.301 Introduction.

(a) *Policy.* This subpart contains regulations for single family Rural Housing (RH) loan guarantees by the Rural Housing Service (RHS) and applies to lenders, borrowers, and other parties involved in making, guaranteeing, servicing, holding or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RHS employees, members of their families, known close relatives, or business or close personal associates is subject to the provisions of subpart D of part 1900. Applicants for this assistance are required to identify any known rela-

tionship or association with an RHS employee.

(b) *Program objective.* The basic objective of the guaranteed RH loan program is to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans which otherwise would not be made without a guarantee. Guarantees issued under this subpart are limited to loans to applicants with incomes that do not exceed income limits as provided in exhibit C of FmHA Instruction 1980–D (available in any RHS office).

(c) [Reserved]

(d) *Nondiscrimination.* Loan guarantees and services provided under this subpart are subject to various civil rights statutes. Assistance shall not be denied to any person or applicant based on race, sex, national origin, color, familial status, religion, age, or physical or mental disability (the applicant must possess the capacity to enter into a legal contract for services). The Consumer Protection Act provides that the applicant may not be denied assistance based on receipt of income from public assistance or because the applicant has, in good faith, exercised any right provided under the Act.

§ 1980.302 Definitions and abbreviations.

(a) The following definitions are applicable to RH loans:

Agency: Rural Housing Service (RHS).

Annual fee. A periodic amount that is based on the average annual scheduled unpaid principal balance of the loan and is paid by the servicing lender to Rural Development on an annual basis for issuance of a Loan Note Guarantee. The fee may be passed on to the borrower and included in the monthly mortgage payment of a borrower and is considered when calculating applicant repayment ratios.

Applicant. The party applying to a Lender for a loan.

Approval official. An RHS employee with delegated loan approval authority under subpart A of part 1901 consistent with the amount and type of loan considered.

Borrower. Collectively, all parties who applied for and received a specific guaranteed loan from an eligible Lender.

Coapplicant. An adult member of the household who joins the applicant in applying to a lender for a loan.

Conditional commitment. RHS's notice to the Lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in the notice.

Development standard. The current edition of any of the model building, plumbing, mechanical, and electrical codes listed in exhibit E to subpart A of part 1924 applicable to single family residential construction or other similar codes adopted by RHS for use in the state.

Disabled person. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. The disability is expected to be of long or indefinite duration; substantially impede the person's ability to live independently; and is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;
- (2) Is manifested before the person attains age 22;
- (3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in one or more of the following areas of major life activity:

- (i) Self-care,
- (ii) Receptive and expressive language,
- (iii) Learning,
- (iv) Mobility,
- (v) Self-direction,
- (vi) Capacity for independent living, and
- (vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Displaced homemaker. An individual who is an adult; has not worked full-time full-year (2,080 hours) in the labor force for a number of years but has during such years worked primarily without remuneration to care for the home and family; and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Elderly family. An elderly family consists of one of the following:

- (1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled and is the applicant/borrower or the coapplicant/coborrower; or
- (2) Two or more unrelated elderly (age 62 or older), disabled persons who are living together, at least one of whom is the applicant/borrower or coapplicant/coborrower; or

(3) In the case of a family where a deceased borrower/coborrower or spouse was at least 62 years old or disabled, the surviving household members shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving members may not meet the definition of elderly family on their own, provided:

- (i) They occupied the dwelling with the deceased family member at the time of his/her death; and
- (ii) If one of the surviving members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of death, the dwelling of the deceased family member was financed under title V of the Housing Act of 1949, as amended.

Eligible lender. A Lender meeting the criteria outlined in §1980.309 who has requested and received RHS approval for participation in the program.

Existing dwelling. A dwelling which has been completed for more than 1 year as evidenced by an occupancy permit or a similar document.

Extended family. A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate households. A typical example is parents living with their adult children.

Extended-term loan modification. A loan modification in which the Lender reduces the interest rate to a level at or below the maximum allowable interest rate and then extends the repayment term up to a maximum of 40 years from the date of loan modification, but only as long as is necessary to achieve the targeted mortgage payment to income ratio.

Federal National Mortgage Association (Fannie Mae) rate. The rate authorized in exhibit B of FmHA Instruction 440.1 (available in any RHS office).

Finance Office. The office which maintains RHS's financial records.

First-time homebuyer. Any individual who (and whose spouse) has had no present ownership in a principal residence during the 3 year period ending on the date of purchase of the property acquired with a guaranteed loan under this subpart. A first-time homebuyer includes displaced homemakers and single parents even though they might have owned, or resided in, a dwelling with a spouse. This definition is used to determine RHS processing priority in accordance with §1980.353.

Guaranteed loan. A loan made, held, and serviced by a Lender for which RHS has entered into an agreement with the Lender in accordance with this subpart.

Household or family. The applicant, coapplicant, and all other persons who will make the applicant's dwelling their primary residence for all or part

of the next 12 months. The temporary absence of a child from the home due to placement in foster care shall not be taken into account in considering family composition and size. Foster children placed in the borrower's home and live-in aides shall not be counted as members of the household.

Interest assistance. Loan assistance payments made by RHS to the Lender on behalf of the borrower.

Lender. The organization making, holding, and/or servicing the loan which is guaranteed under the provisions of this subpart. The Lender is also the party requesting the guarantee. The Lender includes an entity purchasing an RHS guaranteed loan. A purchasing Lender acquires all the privileges, duties, and responsibilities of the originating Lender. The Lender is primarily responsible for originating, underwriting, servicing, and, where necessary, liquidating the loan and disposing of the property in a manner consistent with maximizing the Government's interest.

Lender agreement. The signed master agreement between RHS and the Lender setting forth the Lender's loan responsibilities for loan processing and servicing guaranteed RH loans.

Lender record change. The Lender's notice to RHS of a change of Lender or a change of servicer.

Liquidation. Liquidation of the loan occurs when the Lender acquires title to the security, a third party buys the property at the foreclosure sale, or the borrower sells the property to a third party in order to avoid or cure a default situation with the prior approval of the Lender and RHS. In states providing a redemption period, the Lender does not typically acquire title until after expiration of the redemption period.

Liquidation expense. The Lender's cost of liquidation including those costs that do not qualify as a protective advance.

Loan note guarantee. The signed commitment issued by RHS setting forth the terms and conditions of the guarantee.

Manufactured home. A structure built to the Federal Manufactured Home Construction and Safety Standards and RHS thermal requirements.

Master interest assistance agreement. The agreement among RHS, the borrower, and the Lender which provides the basis for payment of interest assistance and shared equity.

Maximum allowable interest rate. RHS may establish the maximum allowable interest rate in an extended-term loan modification by publishing a notice in the FEDERAL REGISTER describing how to calculate the maximum allowable interest rate. If the maximum allowable interest rate has not been established by notice in the FEDERAL REGISTER, the maximum allowable interest rate shall be 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30-year fixed-rate mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the loan modification is executed. Weekly PMMS rates are published on the Freddie Mac Web site, and the Federal Reserve Board includes the average 30-year PMMS rate in the list of Selected Interest Rates that it publishes weekly in its Statistical Release H.15.

Minor. A person under 18 years of age. Neither the applicant, coapplicant, or spouse may be counted as a minor. Foster children placed in the borrower's home are not counted as minors for the purpose of determination of annual or adjusted income.

Mortgage payment to income ratio. This ratio is defined as the monthly mortgage payment (principal, interest, taxes, and insurance) divided by the borrower's gross monthly income.

Mortgage recovery advance. A mortgage recovery advance is funds advanced by the Lender on behalf of a borrower to satisfy the borrower's arrearage, pay legal fees and foreclosure costs related to a cancelled foreclosure action, and reduce principal. Upon request, RHS will reimburse the Lender for eligible mortgage recovery advances. The maximum mortgage recovery advance consists of the sum of:

- (i) Arrearages not to exceed 12 months of principal, interest, taxes, and insurance;
- (ii) legal fees and foreclosure costs related to a cancelled foreclosure action; and
- (iii) principal reduction.

The maximum mortgage recovery advance is 30 percent of the unpaid principal balance as of the date of default.

Net family assets. Include:

(1) The value of equity in real property, savings, individual retirement accounts (IRA), demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but exclude:

- (i) Interests in Indian Trust land,
- (ii) The value of the dwelling and a minimum adequate site,
- (iii) Cash on hand which will be used to reduce the amount of the loan,
- (iv) The value of necessary items of personal property such as furniture and automobiles and the debts against them,
- (v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and
- (vi) The value of a trust fund that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the funds continue to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the 2 years preceding the date of application, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be less than fair market value if the household member receives important consideration not measurable in dollar terms.

Net proceeds. The proceeds remaining from the property after it is sold or its net value as determined in accordance with this subpart. The determination of net proceeds depends upon whether the property is sold or acquired by the Lender. Net proceeds may be determined using the appraised value and subtracting authorized deductions when the Lender acquires the property.

Protective advance. Advances made by the Lender when the borrower is in liquidation or otherwise in default to protect or preserve the security from loss or destruction.

Qualifying income. The amount of the applicant's income which the lender determines is adequate and dependable enough to consider for repayment ability. This figure may be different from the adjusted income which is used for RHS program eligibility. Qualifying income is typically less than adjusted income unless the applicant has income from the sources listed in §1980.347(e).

Rural area. An area meeting the requirements of §1980.312. Rural areas are designated on maps available in the RHS office servicing that area.

Single parent. An individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

State Director. Director of RHS programs within a state office area.

Total debt to income ratio. Total debt to income ratio is defined as the borrower's monthly mortgage payment plus all recurring monthly debt divided by the borrower's gross monthly income.

Veteran. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable discharge including "clemency discharges" and who served on active duty in such forces:

(1) From April 6, 1917, through March 31, 1921;

(2) From December 7, 1941, through December 31, 1946;

(3) From June 27, 1950, through January 31, 1955; or

(4) For more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(b) The following abbreviations are applicable to this subpart:

Fannie Mae— Federal National Mortgage Association.

FCS— Farm Credit Service.

FHA— Federal Housing Administration.

Freddie Mac— Federal Home Loan Mortgage Corporation.

Ginnie Mae— Government National Mortgage Association.

HUD— Department of Housing and Urban Development.

IRS— Internal Revenue Service.

MCCs— Mortgage Credit Certificates.

PITI— Principal, Interest, Taxes, and Insurance.

RHS— Rural Housing Service.

URAR— Uniform Residential Appraisal Report.

VA— Department of Veterans Affairs.

[60 FR 26985, May 22, 1995, as amended at 75 FR 52432, Aug. 26, 2010; 77 FR 40789, July 11, 2012]

§§ 1980.303–1980.307 [Reserved]

§ 1980.308 Full faith and credit and indemnification.

(a) *Full faith and credit.* The loan note guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. Misrepresentation includes negligent misrepresentation. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of RHS. The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which RHS acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent lender would act up to the time of